

APPEAL NO. 020089
FILED FEBRUARY 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 16, 2001. The appellant (claimant) appeals the hearing officer's determinations that the claimant did not sustain a compensable injury on _____, or on any other relevant date, and that the claimant has not had disability because of a compensable injury occurring on _____, or on any other relevant date. The respondent (carrier) responded.

DECISION

The hearing officer's decision, as reformed herein, is affirmed.

The disputed issues before the hearing officer were whether the claimant sustained a compensable injury on _____, and whether the claimant has had disability resulting from the claimed injury of _____. Although there was discussion at the CCH regarding adding as a party to the proceedings the carrier for the claimant's 1995 injury, that was not done, and there was no disputed issue before the hearing officer with regard to the 1995 injury.

The claimant testified that while he was performing his job duties on _____, he was injured when he pulled on bars and fell backwards. Section 401.011(10) defines a "compensable injury" as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." The claimant had the burden to prove that he was injured during the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Conflicting evidence was presented with regard to the claimed work-related injury of _____. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The finder of fact may believe that a claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson, supra. The hearing officer was apparently not persuaded by the conflicting evidence that the claimant was injured at work as claimed on _____. Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

In order that the hearing officer's decision not be misconstrued to be a decision on the compensability of the 1995 injury, we reform the hearing officer's Findings of Fact Nos. 5 and 6, Conclusions of Law Nos. 3 and 4, and the decision to delete the words "or on any other relevant date." We also reform the hearing officer's order to delete the reference to "carrier 2," whom the hearing officer identified as the insurance carrier for the 1995 injury, and to specifically reference the claimed date of injury of _____, and the name of the employer's workers' compensation insurance carrier on that date. As reformed, the

aforementioned findings, conclusions, decision, and order state as follows:

FINDINGS OF FACT

5. Claimant did not sustain a compensable injury due to pulling on bars on _____.
6. Claimant has not been unable to obtain and retain employment at his preinjury wage because of a compensable injury occurring on _____.

CONCLUSIONS OF LAW

3. Claimant did not sustain a compensable injury on _____.
4. Claimant has not had disability because of a compensable injury occurring on _____.

DECISION

Claimant did not sustain a compensable injury on _____. Claimant has not had disability because of a compensable injury occurring on _____.

ORDER

Zurich American Insurance Company is not liable for benefits for the claimed injury of _____, and it is so ordered.

As reformed herein, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge